

NO. 012005

**Amendment 1
to the Joint Powers Agreement between the City of Santa Fe and the County
of Santa Fe Governing the Buckman Direct Diversion Project**

This Amendment 1 to the Joint Powers Agreement (hereinafter referred to as "Amendment 1") is entered into pursuant to the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through 11-1-7 by and between the City of Santa Fe (hereinafter referred to as "the City"), a municipal corporation of the State of New Mexico, and the Board of County Commissioners of Santa Fe County (hereinafter referred to as "the County"), a political subdivision of the State of New Mexico, effective as of later of the date of last signature below.

Recitals

WHEREAS, the County and City have executed the Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe Governing the Buckman Direct Diversion Project (hereinafter referred to as "the JPA"), which became effective on March 7, 2005 when approved by the Department of Finance Administration, State of New Mexico; and

WHEREAS, the City and County desire to further clarify cost sharing and amend provision concerning the required signatories of the PMFSA and other technical issues; and

WHEREAS, the parties hereto desire to enter into an amendment to the JPA and to specify herein their mutual agreements and understandings.

NOW, therefore, the County and City agree, as follows:

1. Changes to the Cost Sharing provision. *JPA Section 17. Cost Sharing for Operation and Maintenance Costs for the BDD Project*, shall be and hereby is amended, as follows.

17. Cost Sharing for Operation and Maintenance Costs for the BDD Project. All reasonable and necessary costs and expenses attributable to the operation and maintenance of the BDD Project shall be included by the BDD Board in its annual budget and shall be apportioned among the parties and Las Campanas. The apportionment of such costs shall be determined in the Facility Operations and Procedures Agreement (FOPA) executed by the County, the City and Las Campanas.

Paragraph 2, deleted.

Paragraph 3, deleted.

1 **2. Changes to the JPA Definitions.** *JPA Definition for the Project Management and Fiscal*
2 *Services (PMFS) Contract*, shall be and hereby is amended as follows.

3
4 **Project Management and Fiscal Services Agreement (PMFSA)** means a
5 contract reviewed and recommended by the BDD Board and executed between the
6 City, the County and the Project Manager for the provision of the management,
7 fiscal services and project financing as described in *JPA Section 12. Project*
8 *Management and Fiscal Services*.

9
10 **3. Changes to the Responsibilities and Duties of the BDD Board.** *JPA Section 4.*
11 *Responsibilities and Duties of the BDD Board (paragraph 4, lines 42 and 43)*, shall be and
12 hereby is amended as follows.

13
14 Upon the review and recommendation of the BDD Board, the City, the County
15 and the Project Manager shall enter into the PMFSA. The BDD Board shall
16 supervise the performance of the Project Manager, as provided in *JPA Section 12.*
17 *Project Management and Fiscal Services*.

18
19 **4. Changes to the Responsibilities and Duties of the BDD Board.** *JPA Section 4.*
20 *Responsibilities and Duties of the BDD Board (paragraph 5, lines 3 and 4)*, shall be and hereby
21 is amended as follows.

22
23 Upon the review and recommendation of the BDD Board, the City, the County
24 and Las Campanas shall enter into the FOPA.

25
26 **5. Changes to Project Management and Fiscal Services.** *JPA Section 12. Project*
27 *Management and Fiscal Services*, shall be and is hereby amended, as follows.

28
29 Upon the review and recommendation of the BDD Board, the City, the County
30 and the Project Manager shall enter into the PMFSA. The PMFSA shall provide
31 for management, fiscal services and project financing of the BDD Project. Under
32 the PMFSA, the Project Manager shall be responsible for: (1) obtaining the
33 environmental approvals necessary to construct and operate the BDD Project; (2)
34 the design and construction of the BDD Project; (3) the operation and
35 management of the BDD Project and completion of the Owners' Consultant
36 Contract and the Design Build Contract; (4) providing staffing to the BDD Board;
37 (5) providing fiscal services and serving as the procurement agent for the BDD
38 Project, the Owners' Consultant Contract, the Design Build Contract, and all other
39 fiscal services related to the design, procurement, construction, operation and
40 maintenance of the BDD Project, including managing all revenues, maintaining
41 all accounts, procuring necessary property, goods and services, and receiving and
42 disbursing all funds. The PMFSA shall provide that the Project Manager will

1 report directly to the BDD Board, and the BDD Board shall have authority to
2 supervise the performance of the Project Manager.
3

4 The PMFSA shall contain a fee schedule for the fiscal agent services to be
5 provided under the PMFSA. It shall, at a minimum, specify that funds of the BDD
6 Project shall be held in one or more separate accounts and shall not be commingled
7 with the funds of any of the parties to this JPA, and shall specify that the Project
8 Manager may invest its funds only in accordance with any applicable laws of the
9 State of New Mexico governing the investment of public funds. The PMFSA shall
10 specify the types and threshold amounts of expenditures that require approval of
11 the BDD Board in advance.
12

13 **6. Changes to Designation of Project Manager.** *JPA Section 13. Designation of Project*
14 *Manager* shall be and is hereby amended, as follows.
15

16 The City and County agree that the Sangre de Cristo Water Division will be the
17 initial Project Manager and that upon the review and recommendation of the BDD
18 Board, the City, the County and the Project Manager shall enter into the PMFSA.
19

20 Unless terminated sooner by the City, the County and the BDD Board, for cause,
21 the PMFSA with the Sangre de Cristo Water Division will terminate on December
22 1, 2015. Upon termination, the City, the County and the BDD Board shall have
23 authority to enter into a new PMFSA with any one of the following: (1) Sangre de
24 Cristo Water Division; (2) the Santa Fe County Water Utility or (3) a Regional
25 Entity.
26

27 After 2015, the new PMFSA shall be reviewed by the City, the County, and the
28 BDD Board at the end of the term of the new PMFSA, or every seven years,
29 whichever occurs first. After 2015, the functions performed under the PMFSA
30 may continue to be combined in a single new PMFSA or may be separated into
31 two or more replacement PMFSAs.
32

33 **7. No other changes are made by this amendment other than those specifically described above.**
34

35 **IN WITNESS WHEREOF**, each of the City of Santa Fe, New Mexico, and the Board of
36 County Commissioners of Santa Fe County, New Mexico, has caused this Agreement to be
37 executed and delivered by its duly authorized representatives as of the date specified below.
38

39 Recommended to the County of Santa Fe Commission and City of Santa Fe Council
40
41

42 _____
Chair, Buckman Direct Diversion Board / Date

1
2 THE BOARD OF COUNTY COMMISSIONERS OF
3 SANTA FE COUNTY
4

5
6
7 By: _____

8 Harry Montoya, Chair
9

10 ATTEST:

11
12
13 _____
14 Valerie Espinosa, County Clerk
15

16 Approved as to form:

17
18 _____
19
20 Stephen C, Ross, County Attorney
21
22

1 Approved

2 *Daniel Cross*

3
4 Mayor, City of Santa Fe Council / Date

5
6
7 Approved as to Form

8 *Kyle L. Hard, CAO 10.16.06*

9
10 City of Santa Fe Attorney's Office / Date

11
12
13 *Yocanda G. Nigam 10-20-06*

14 City of Santa Fe Clerk / Date

ccmtg 9/27/06

15
16 *Kathryn Faveling 10/16/06*

17
18 City of Santa Fe Finance / Date

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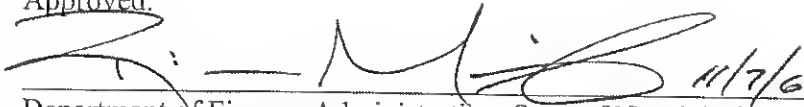
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Approved:

A large, stylized handwritten signature in black ink, spanning across the line for the Department of Finance Administration.

Department of Finance Administration, State of New Mexico / Date

AND

8/11
11/3/06